

SEMINOLE COUNTY GOVERNMENT AGENDA MEMORANDUM

SUBJECT: Approval of a Mitigation Purchase Agreement (MPA) for the Purchase of Wetland Mitigation Units by Seminole County in Conjunction with the Yankee Lake Surface Water plant 5.5 MGD Project

DEPARTMENT: Environmental Services

DIVISION: Planning Engineering Inspections

AUTHORIZED BY: Joe Forte

CONTACT: Carol Hunter

EXT: 2021

MOTION/RECOMMENDATION:

Approve and authorize the Chairman to execute a Mitigation Purchase Agreement (MPA) for purchase of wetland mitigation units by Seminole County in conjunction with the Yankee Lake Surface Water Plant 5.5 MGD Project from Hal. E Colbert, Co-Trustee, owner of the Colbert-Cameron Mitigation Bank.

District 5 Brenda Carey

Carol Hunter

BACKGROUND:

This surface water plant construction project will provide reclaimed augmentation to the County's reclaimed system.

Construction is anticipated to start in the Fall of 2009. Funds are available in Capital Project Number 1816-01. The construction of this project will impact 6.1 acres of existing wetlands. In order to mitigate these impacts, Florida Department of Environmental Protection is requiring the purchase of 8 mitigation units at a cost of \$50,000 per unit, totaling to \$400,000.

STAFF RECOMMENDATION:

Staff recommends that the Board approve and authorize the Chairman to execute a Mitigation Purchase Agreement (MPA) for purchase of wetland mitigation units by Seminole County in conjunction with the Yankee Lake Surface Water Plant 5.5 MGD Project from Hal. E Colbert, Co-Trustee, owner of the Colbert-Cameron Mitigation Bank.

ATTACHMENTS:

1. Agreement

Additionally Reviewed By:

☒ County Attorney Review (Matthew Minter)

WETLAND MITIGATION CREDIT PURCHASE AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 2009, by and between **WILLIAM L. COLBERT** as Managing Trustee of that certain trust known as Colbert/Cameron Trust No. 1 dated February 28, 1996, whose mailing address is Post Office Box 4848, Sanford, Florida 32772-4848, hereinafter referred to as the "SELLER", and **SEMINOLE COUNTY**, a political subdivision of the State of Florida, whose address is 1101 East First Street, Sanford, FL 32771, hereinafter referred to as the "BUYER".

W I T N E S S E T H:

WHEREAS, SELLER is engaged in the business of providing compensatory mitigation credits for projects requiring wetland mitigation for development; and

WHEREAS, BUYER needs to obtain compensatory wetland mitigation credits to meet regulatory obligations for its Regional Water Treatment Facility at Yankee Lake, Phase I, Permit ERP#59-0280741-001, issued by the State of Florida Department of Environmental Protection (FDEP), hereinafter referred to as the "PROJECT"; and

WHEREAS, SELLER is the owner of a wetland mitigation bank approved by the St. Johns River Water Management District (SJRWMD) (Ref: SJRWMD **Permit No. 4-127-0314M-ERP**, hereinafter, "**the mitigation bank**") incorporated herein by reference; and

WHEREAS, SELLER warrants that the mitigation bank has sufficient credits available to satisfy BUYER'S requirements for the PROJECT; and

WHEREAS, the PROJECT contains six and one tenth (6.1) acres of wetlands that FDEP requires to be mitigated by 8.0 mitigation credits, as a condition of permit issuance; and

WHEREAS, the BUYER agrees to purchase from the SELLER as 8.0 wetland mitigation credits for compensatory mitigation purposes, subject to the terms of this Agreement,

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained and for TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. PURCHASE OF WETLAND MITIGATION CREDITS. Subject to the conditions specified in this Agreement, SELLER shall convey to BUYER 8.0 wetland mitigation credits, required by FDEP as a condition precedent to issuing a permit to BUYER for construction of the PROJECT.

SECTION 2. PURCHASE PRICE. The purchase price for the 8.0 mitigation credits is a total of FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00 calculated at the rate of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) per credit, payable within twenty (20) days of full execution of this Agreement. No additional payment shall be due from BUYER to SELLER for any management fee, any other regulatory requirements regarding use of the Mitigation Bank as compensatory mitigation for the PROJECT.

SECTION 3. SELLER'S ASSISTANCE. In consideration for the payment of the Purchase Price, SELLER shall be responsible for undertaking any and all actions necessary to accomplish the release by SJRWMD of the

8.0 wetland mitigation credits for the PROJECT. SELLER agrees to show to BUYER SJRWMD's confirmation of the release of the 8.0 wetland mitigation credits from the Mitigation Bank to the credit of SEMINOLE COUNTY for the PROJECT, within forty-five (45) days of BUYER's payment of the Purchase Price. SELLER agrees that if it is unable to perform this requirement, it shall refund the entire purchase price within sixty (60) days of BUYER's payment of the Purchase Price.

SECTION 4. REGULATORY APPROVAL OF THE MITIGATION BANK. SELLER warrants to BUYER, and BUYER relies on such warranty, that the Mitigation Bank is fully approved by the SJRWMD for issuance of the type of wetland mitigation credits that BUYER requires for the PROJECT.

SECTION 5. BUYER AND SELLER AUTHORITY. BUYER and SELLER warrant that each has the authority to sign this Agreement and bind itself to the terms herein.

SECTION 6. TIME IS OF THE ESSENCE. Time is of the essence in this Agreement.

SECTION 7. AGREEMENT NOT RECORDABLE. This Agreement shall be recorded in the records of the Clerk to the Board of County Commissioners, however, not in the public land records of any county.

SECTION 8. EFFECTIVE DATE. This Agreement is effective on the date when the last of the parties executes this document.

SECTION 9. CALCULATION OF TIME. Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays. Any time period ending on a Saturday, Sunday

or national legal holiday shall be extended until 5:00 p.m. of the next business day.

SECTION 10. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

SECTION 11. SEVERABILITY. If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 12. MODIFICATIONS OR AMENDMENTS IN WRITING. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties with the same formality as herewith.

SECTION 13. BOARD OF COUNTY COMMISSIONER APPROVAL. This Agreement shall not be binding on BUYER unless and until approved by the Board of County Commissioners of Seminole County, Florida.

[Balance of this page intentionally blank; signatory page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives on the dates shown below.

Signed, sealed and delivered
in the presence of:

SELLER

WITNESSES:

SIGNATURE

FRANK C. WHIGHAM
PRINT NAME

SIGNATURE

MARY E. DECKER
PRINT NAME

WILLIAM L. COLBERT, MANAGING
TRUSTEE, Colbert / Cameron Trust
No.1 dated February 28, 1996

DATED: June 15, 2009

STATE OF FLORIDA)
COUNTY OF Seminole

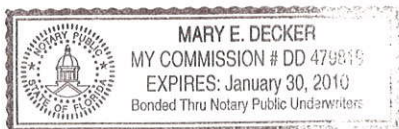
The foregoing instrument was acknowledged before me this 15 day of June, 2009, by WILLIAM L. COLBERT, MANAGING TRUSTEE of the Colbert / Cameron Trust No. 1, dated February 28, 1996, ☐ who is personally known to me or ☐ who has produced _____ as identification.

NOTARY PUBLIC

Print Name

Notary Public in and for the County
and State Aforementioned

My commission expires: _____



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ATTEST:

**BOARD OF COUNTY COMMISSIONERS
SEMINOLE COUNTY, FLORIDA**

MARYANNE MORSE
Clerk to the Board of
County Commissioners of
Seminole County, Florida.

By: _____
BOB DALLARI, Chairman

Date: _____

For the use and reliance
of Seminole County only.
Approved as to form and
legal sufficiency.

As authorized for execution by the Board
of County Commissioners at its _____,
2009, regular meeting

County Attorney

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MGM
06/15/09

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